

JUDGE DAVID HITTNER
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Courtroom No. 8A, 8th Floor
United States Courthouse
515 Rusk Avenue, Room 8509
Houston, Texas 77002
(713) 250-5711

Ellen Alexander, Case Manager
United States District Clerk
Post Office Box 61010
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PROCEDURES

	Page
1. APPEARANCES AT SETTINGS.....	3
2. SCHEDULING ORDERS.....	3
3. TRIAL CALENDAR.....	4
4. PRETRIAL PROCEDURES.....	5
5. DISCOVERY (EXTENSION/MOTIONS).....	5
6. MOTION PRACTICE.....	5
7. CONTACT WITH THE JUDGE, LAW CLERK, CASE MANAGER.....	6
8. COURTROOM PROCEDURES.....	6
9. SANCTIONS.....	9
10. SETTLEMENT.....	10
11. CONSENT TO TRIAL BEFORE A MAGISTRATE JUDGE.....	10
12. ATTORNEY CONDUCT.....	10

EFFECTIVE JULY 22, 1998

CIVIL PROCEDURES MANUAL

IN ORDER TO INSURE AN EXPEDITIOUS DISPOSITION OF YOUR CASE BEFORE JUDGE DAVID HITTNER IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, THIS PROCEDURES MANUAL IS PROVIDED IN THE INTERESTS OF BOTH THE ATTORNEYS AND THE COURT.

THE MANUAL IS DESIGNED TO PROVIDE ANSWERS TO THOSE QUESTIONS MOST OFTEN ASKED BY COUNSEL NOT FAMILIAR WITH THE PRACTICES OF THE INDIVIDUAL JUDGES. THIS IS NOT A REITERATION OF THE LOCAL RULES, BUT SHALL BE USED IN CONJUNCTION WITH THOSE RULES. BEFORE TELEPHONING THE CASE MANAGER ASSIGNED TO JUDGE DAVID HITTNER, PLEASE REVIEW THE COURT'S PROCEDURES CONTAINED HEREIN.

USE OF THIS MANUAL AND FAMILIARITY WITH THE LOCAL RULES FOR THE SOUTHERN DISTRICT OF TEXAS WILL EQUIP YOU TO PROCEED MOST EFFECTIVELY BEFORE THIS COURT.

1. APPEARANCES AT SETTINGS

The attorney designated on the pleadings as "in charge" must attend all settings before the Court, or send an attorney familiar with the case who has authority to make decisions binding on the party represented.

The Court requires that counsel be on time for all settings.

Failure to appear when notified of a setting will subject that attorney and/or his or her client to sanctions, including dismissal for want of prosecution and/or appropriate judgment.

Out-of-town counsel may appear for some conferences by telephone provided that arrangements are made through the Case Manager well in advance.

2. SCHEDULING ORDERS

If a party or counsel for a party fails to meet the deadlines in the Scheduling Order or, if a party or counsel for a party fails to appear, or appears substantially unprepared, or participates in bad faith at the scheduling conference, this Court may impose sanctions as provided in Rule 37(b)(2) and Rule 16(f) of the Federal Rules of Civil Procedure.

The Scheduling Order will include the cutoff dates for:

- (a) the joinder of new parties;
- (b) the designation of expert witnesses;
- © the completion of discovery;
- (d) the submission of all motions; and
- (e) the submission of a Joint Pretrial Order.

The Scheduling Order shall control the subsequent course of the case and shall not be modified except by leave of this Court upon a showing of good cause.

If new parties are joined subsequent to the mailing of the order, the party causing such joinder shall provide copies of all orders previously entered in the case, along with the Scheduling Order and the Court's Procedures Manual to the new parties.

3. TRIAL CALENDAR

Cases will be set for a trial term at a scheduling conference held before the U.S. Magistrate Judge.

Trial Term. Judge Hittner conducts a two-month trial term. The cases will be placed on a trailing docket for the scheduled term and will be reached as soon as possible. Your trial date will be set at a docket call held prior to the trial term or by order of the court.

The case manager will keep in close touch with counsel and every effort will be made to give maximum notice concerning the trial setting.

Continuances. Judge Hittner maintains a restrictive policy on trial continuances. A continuance will be granted only on the basis of exceptional circumstances.

Joint or agreed motions for continuance are not binding on the Court and will not be granted as a routine matter.

A trial will not be continued because of unavailability of a fact witness or an expert witness, including a medical witness. Counsel are expected to anticipate such possibility and be prepared to present testimony by written deposition, by videotaped deposition, or by stipulation, in accordance with applicable rules.

Settlement. If a case is settled, prompt notice (written or verbal) shall be given to the Case Manager. If timely notice is given, counsel need not appear for trial.

Upon the announcement of settlement, the Court will enter an Order of Dismissal, without prejudice to the right of any party to move for reinstatement within ninety (90) days upon presentation of adequate proof that final approval of the settlement could not be obtained from the respective principals for whom counsel act.

Counsel shall submit promptly the agreed final judgment for approval and entry on or before the expiration of the 90-day period.

4. PRETRIAL PROCEDURES

Pretrial Order. Counsel for the Plaintiff is responsible for ensuring that the Final Joint Pretrial Order is filed timely. If, for some reason, Plaintiff fails to file the Joint Pretrial Order, then Defendant(s) is responsible for filing Defendant's Proposed Pretrial Order. All parties are responsible for complying with all requirements of the Final Joint Pretrial Order.

The required attachments--proposed Findings of Fact & Conclusions of Law or proposed Jury Instructions and Interrogatories; Memorandum of Law or Pretrial Brief; Motions in Limine; proposed Voir Dire Questions (even though counsel will often conduct voir dire); Witness Lists; Expert Witness Qualifications; and Exhibit Lists--are a part of the Final Joint Pretrial Order and must be submitted for filing with such Order.

In addition, Motions in Limine shall also be filed as a separate pleading for the Court's consideration at the time of filing the Pretrial Order.

Failure to appear and/or timely file the Final Joint Pretrial Order will subject counsel and his or her client to sanctions, including dismissal for want of prosecution and/or appropriate judgment.

5. DISCOVERY (EXTENSION/MOTIONS)

Upon the Court's discretion, discovery motions may be referred to the Magistrate Judge assigned to Judge Hittner.

Motions for extension of discovery must be filed in advance of the deadline.

6. MOTION PRACTICE

Judge Hittner follows the written motion practice as outlined in Local Rule 6. Motions will be submitted in accordance with Local Rule 6 and are deemed unopposed, if no response is on file.

A submission date may be extended prior to its expiration by stipulation of counsel filed with the clerk of court. Extensions shall not alter existing scheduling order deadlines.

Requests for oral argument are not necessary. The Case Manager will notify counsel should the Court determine that oral argument would be beneficial. Motion conferences will be held in open court. If counsel anticipates the need to offer evidence and testimony, leave to do so must be obtained from the Court in advance.

Each memorandum or brief filed in this Court shall be limited to 20 pages. Any memorandum that is more than 15 pages must be accompanied by a concise summary, no longer than 3 pages, narrowing the points in the brief.

Excessive filing of a large number of motions or filing voluminous paperwork may result in sanctions.

All exhibits (contract, leases, affidavits, etc.) referred to in briefs must be attached to the brief. Copies of all unpublished cases (not available on West law or Lexis) and all state cases (not available on West law or Lexis) other than Texas cases cited shall also be attached to the pleading.

Substantive issues of law shall not be addressed in letter form to the Court. They should be filed in the form of a pleading with the Clerk.

Counsel must notify the Case Manager immediately if any matter is resolved prior to the setting.

If a Motion Hearing is scheduled and a pleading is filed within 5 days of the scheduled hearing, counsel shall deliver a courtesy copy to chambers.

7. CONTACT WITH THE JUDGE, LAW CLERK, CASE MANAGER

Counsel shall contact the Case Manager when requesting immediate action by the Court on emergency matters. Inquiries regarding settings and procedures should also be directed to the Case Manager.

Counsel are not permitted to discuss cases or procedures with either of the Court's law clerks. (Local Rules, Appendix C)

Information about filing documents, entry of orders, or docket entries may be obtained from the docket clerk.

Copies of urgent documents (including letters) may be sent to chambers.

8. COURTROOM PROCEDURES

Conduct of counsel during the presentation of a case will be governed by Local Rule 19 regarding Courtroom Procedures and will be strictly enforced. Enter and

leave the courtroom by the front doors.

Hours

Court will generally convene for trial at 10:00 a.m. and adjourn between 5:30 and 5:45 p.m. The lunch break is generally from 12:30 to 1:45 p.m. There will be a 15-minute recess during the morning and 15-minute recesses during the afternoon as appropriate. Hearings and bench trials may have variable hours.

All counsel and parties are expected to be seated at the counsel tables and ready to proceed when the Court is called into session. Counsel may drink water in the courtroom (provided at the counsel table), but no other eating or drinking is permitted. There is no smoking anywhere in the courthouse.

Telephone Calls

The Judge's staff will not take messages for counsel. Please do not request the use of telephones in chambers; public phones are available outside the courtroom.

Filing of Pleadings

Pleadings submitted by counsel during the course of a trial should be presented in duplicate (original for filing; copy for the Court) to the Case Manager.

Interrogation by Counsel

Counsel may question witnesses either while standing at the lectern or seated at the counsel table, whichever is preferred.

Address by Counsel

Counsel shall conduct opening statements and closing arguments either from the lectern, standing before the jury (in jury trials) or facing the Court (in bench trials).

Expert Witnesses

Counsel shall submit, as part of the Final Joint Pretrial Order, a written summary of the qualifications of each expert witness. The Court expects the attorneys to prove their witnesses expertise through examination.

Witnesses

Counsel shall submit as part of the Final Joint Pretrial Order two (2) copies of the witness list, listing such witnesses in the order in which they will be called. In a lengthy trial involving numerous witnesses, a special scheduling

order may be issued in which time limits and subject matter for each witness will be required to be set forth.

Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum.

Counsel shall keep in mind the Court's hours and schedule witnesses accordingly.

Equipment

Counsel are responsible for providing sound or video equipment. Prior permission must be obtained from the Case Manager so arrangements for bringing equipment into the building can be made with building security.

Easels with writing pads and a blackboard are available for use in the courtroom. Overhead projectors are not provided by the Court.

Use of Depositions

A witnesses' testimony (jury or non-jury trial) may not be offered by deposition at any trial before the Court unless the witness is found by the Court to be unavailable pursuant to Federal Rule of Civil Procedure 32(a)(3).

With respect to all deposition testimony to be offered in evidence, counsel shall review the deposition and agree to excise all irrelevant and repetitive testimony and all colloquy between counsel. Counsel shall exchange their designated testimony and attempt to resolve all objections prior to trial. Objections to any portion of the deposition shall be filed in advance of trial, and the Court will rule on the objections before the deposition is read.

In a Non-Jury Trial, counsel shall read only the most relevant deposition testimony into the record. In addition, counsel shall attach to the front of the deposition exhibit a summary of what each party intends to prove by such testimony. If portions of the deposition are to be offered, counsel shall attach to the front of the deposition exhibit the designated portions, citing line and page number inclusively, of such testimony to be read by the Court.

Exhibits

Counsel for each of the parties shall assemble all documents, photographs, or other materials expected to be used at trial. Such documents or copies thereof shall be made available to opposing counsel prior to trial. Each counsel shall attach to the Final Joint Pretrial Order two (2) copies of the list of all exhibits to be offered.

A final revised list of exhibits to be offered, and a final witness list shall be

submitted to the case manager at time of trial.

The Court considers all exhibits listed in the Final Joint Pretrial Order in evidence unless opposing counsel makes his or her objections known as provided by the applicable rules. Local Rule 11(B)

All exhibits will be offered and received in evidence as the first order of business at the trial.

Preparation of Exhibits

The offering party shall mark its exhibits with the party's name, case number, and exhibit number. Any courtesy copies of the exhibits shall be assembled in loose-leaf notebooks with a numbered sticker on each document. Such number shall also appear on a tab extending beyond the right side of the notebook. Each notebook shall be labeled on the outside cover with the name of the offering party, the case style, and the case number. Each notebook shall not exceed three (3) inches in depth.

The offering party shall provide two courtesy copies of this notebook for use by the Court, at the time of trial.

Exhibits of unmanageable size (such as charts, diagrams, posters, etc.) shall be withdrawn immediately upon completion of trial and reduced reproductions or photographs substituted pursuant to Local Rule 11(C)(1).

Non-Jury Trial

Counsel shall submit, as part of the Final Joint Pretrial Order, proposed Findings of Fact and Conclusions of Law in duplicate, and Memorandum of Law or Pretrial Brief.

Counsel shall limit Posttrial Briefs to specific questions assigned by the Court during or after trial.

Jury Trial

Counsel shall submit, as part of the Final Joint Pretrial Order, proposed Voir Dire Questions, proposed Jury Instructions (with citation of authority on a separate page), and proposed Interrogatories to the Jury. Jury instructions and jury interrogatories must be short, simple, and concise.

Although voir dire questions are to be submitted, in most cases the Court will permit counsel to conduct their own voir dire examination in jury trials. Prior to the commencement of the voir dire, counsel for each party will receive a copy of a questionnaire on each prospective juror. This questionnaire will provide a comprehensive composite of each juror's background to aid the attorneys in narrowing the questioning and shortening the voir dire.

Counsel are to remain near the courtroom during jury deliberations to be immediately available for jury notes or a verdict, unless given permission to leave by the Court.

After the jury and counsel are excused, counsel may not contact jurors unless otherwise permitted by the Court.

9. SANCTIONS

It is expected that counsel comply with this Procedures Manual, the Local Rules for the Southern District of Texas, and the Federal Rules of Civil Procedure.

The Court will not be sympathetic toward those who seek to practice in this Court without regard to their obligations.

Failure of counsel to abide by these rules and procedures may result in the imposition by this Court of sanctions in accordance with Rules 11, 16, 26, and 37 of the Federal Rules of Civil Procedure, as well as 28 U.S.C. § 1927.

10. SETTLEMENT

The parties in every civil action must make a good-faith effort to settle; and settlement negotiations shall be entered into at the earliest possible time, well in advance of any pretrial conference.

The Court will be available for settlement discussions. In nonjury cases, the Court will not discuss settlement figures except upon request and approval of all concerned parties.

Counsel should notify the Case Manager immediately if any matter is settled.

11. CONSENT TO TRIAL BEFORE THE MAGISTRATE JUDGE

Upon written consent of all parties, civil jury/non-jury trials may be held before United States Magistrate Judge Marcia Crone.

12. ATTORNEY CONDUCT

The Court assumes that attorneys will conduct themselves in a professional manner and be courteous and civil at all times. Conduct including, but not limited to, discourtesy, personal antagonism, stalling tactics, and harassment of attorneys,

clients, witnesses, or the Court staff will not be tolerated. Attorneys are directed to bring such conduct to the district judge's attention forthwith.

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FOR INFORMATION
REGARDING THE
FOLLOWING:

CALL

ADMISSION OF ATTORNEYS	250-5492
APPEALS	250-5529
BAIL BONDS, DISBURSEMENT	250-5546
BILL OF COSTS	250-5525
CIVIL DOCKET COORDINATION CENTER	250-5786 250-5787 250-5788

CLERICAL ASSISTANTS TO U. S. MAGISTRATES JUDGES:

Magistrate Judge Calvin Botley	250-5536
Magistrate Judge Frances Stacy.....	250-5565
Magistrate Judge Nancy K. Johnson.....	250-5534
Magistrate Judge Marcia Crone.....	250-5566
Magistrate Judge Mary Milloy.....	250-5158

CLOSED CASES (Civil)	250-5543
COPY REQUESTS	250-5543
COURT REPORTERS	250-5499

COURTROOM DEPUTIES TO DISTRICT JUDGES:

Lynn N. Hughes	250-5516
David Hittner	250-5511
Kenneth Hoyt	250-5515
Sim Lake	250-5514
Melinda Harmon	250-5518
John D. Rainey	250-5571
Ewing Werlein, Jr.....	250-5533
Lee H. Rosenthal.....	250-5517
Vanessa Gilmore.....	250-5512
Nancy F. Atlas.....	250-5407

CRIMINAL CASES (Open & Closed)	250-5524
EXHIBIT RETRIEVAL	250-5543
FILE ROOM	250-5543
FINANCIAL SECTION	250-5548
INTERPRETERS	250-5667
JURY	250-5528
LOCAL RULES	250-5525
MAGISTRATE JUDGES (See Clerical Assistants)	
MONITION	250-5525
NATURALIZATION	250-5553
PRISONER RELATED CASES	250-5525
REGISTRY FUNDS	250-5548
SERVICE OF PAPERS	250-5525
STATISTICAL INFORMATION	250-5535
SUMMONS	250-5525
TRANSCRIPTS	250-5499
WARRANT OF SEIZURE	250-5525
XEROX COPIES	250-5543